

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.N. RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

RFA.No. 220 of 2012 ()

AGAINST THE JUDGMENT IN OS 106/2004 of ADDL. SUB COURT, KOTTAYAM
DATED 8.8.2011

APPELLANT/DEFENDANT:

K.R. JOSEPH @ JOSE PAUL, AGED 47 YEARS
S/O. GOPI, SOUTHERN STORES AND DISTRIBUTORS
DOOR NO. XIII/1012, M.L. ROAD, KOTTAYAM.

BY ADV. SRI. LIJI. J. VADAKEDOM

RESPONDENT/PLAINTIFF:

M/S. VIJAYA MARKETING ASSOCIATES
NEW MARKET ROAD, KOTTAYAM, REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS MANAGING PARTNER P.K. JOSE
PIN-686001.

BY ADV. SRI. G. SREEKUMAR (CHELUR)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

R.F.A.No.220 OF 2012

Dated this the 25th day of March, 2015

JUDGMENT

Anil K.Narendran, J.

The appellant is the defendant in O.S.No.106 of 2004 on the file of the Court of the Additional Subordinate Judge of Kottayam. The respondent/plaintiff filed the said suit for realisation of an amount of ₹2,04,601/- together with interest @ 12% per annum from 1.4.2002 and costs of the suit. The court below by judgment delivered on 8.8.2011 decreed the suit and the appellant/defendant was directed to pay a sum of ₹2,47,044/- together with interest @ 12% per annum on the principal amount of ₹204,601/- from the date of suit till the date of decree and thereafter @ 6% per annum till realisation with costs. Aggrieved by the said judgment and decree, the appellant/defendant has approached this Court in this appeal.

2. By order dated 11.12.2014, as agreed by both sides, the matter was referred for mediation and the appellant and the Managing Partner of the respondent firm were directed to be present

before the Nodal Officer, Ernakulam Mediation Centre, on 15.12.2014.

3. Now the parties have settled the dispute in mediation and the terms and conditions of the settlement reduced to writing in the form of a memorandum of agreement dated 17.12.2014 under Section 89 of the Code of Civil Procedure, 1908 read with Rules 24 and 25 of the Civil Procedure (Alternative Dispute Resolution) Rules, 2008, verified and signed by both the parties and attested by their respective counsel, is forwarded to this Court along with a report of the Mediator dated 9.2.2015, for recording such compromise and to dispose of this appeal in terms of the said compromise.

4. Going by the memorandum of agreement dated 17.12.2014, both parties have agreed to settle the claim in O.S.No.106 of 2004 for an amount of ₹3,43,785/-, out of which, the appellant/defendant had paid an amount of ₹40,000/- on 10.11.2014 and another sum of ₹63,785/- on 24.11.2014. As far as the balance amount of ₹2,40,000/- is concerned, the appellant/defendant has agreed to pay the aforesaid amount in four monthly instalments of ₹60,000/- each payable on 24.12.2014, 24.1.2015, 24.2.2015 and 24.3.2015 respectively. It is agreed by

both sides that on payment of the above mentioned amount, the liability of the appellant/defendant towards the respondent/plaintiff will stand discharged and that that in the event of default in payment of the amount in accordance with the time schedule referred to above, the respondent/plaintiff will be entitled to recover the entire decree amount as per decree dated 8.8.2011 in O.S.No.106 of 2004.

5. In view of the compromise entered into between the parties, we dispose of this appeal modifying the judgment and decree in O.S.No.106 of 2004 of the Court of the Additional Subordinate Judge of Kottayam to the effect that, in the event of the appellant/defendant paying the balance amount of ₹2,40,000/-, in instalments of ₹60,000/- each on 24.12.2014, 24.1.2015, 24.2.2015 and 24.3.2015 respectively, his liability towards the respondent/plaintiff shall stand discharged in full. But in the event of default on the part of the appellant/defendant in making payment in accordance with the time schedule referred to above, the respondent/plaintiff shall be entitled to execute the decree in O.S.No.106 of 2004 for the balance amount due in terms of the decree passed by the trial court.

6. In view of the settlement of disputes through mediation, it is ordered that the whole court fee paid on the memorandum of appeal shall be refunded to the appellant.

A copy of the memorandum of agreement dated 17.12.2014 shall be appended to this judgment.

Sd/-

P.N.RAVINDRAN, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn